

REMARKS

Claim Rejections

Claims 20-24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Krishnan (US 5,239,037) in view of Brown et al. (US 6,100,208).

Drawings

It is noted that the Examiner previously accepted the drawings as originally filed with this application.

New Claims

By this Amendment, Applicant has added new claims 34-38 to this application. It is believed that claims 20-24 and 34-38 specifically set forth each element of Applicant's invention in full compliance with 35 U.S.C. § 112, and define subject matter that is patentably distinguishable over the cited prior art, taken individually or in combination.

The primary reference to Krishnan teaches, in example 8, a woven nylon cloth coated with two coats of polyurethane and an over coat of adhesive, and a second cloth located on a top surface of the woven nylon cloth.

Krishnan does not teach the middle layer has a first surface directly connected to the upper layer and a second surface directly connected to the lower layer; the water proof and air permeable polyurethane resin located on the first surface of the middle layer is located directly between the woven fabric made of the polyamide fibers and the at least one layer of the first non-woven fabric of the upper layer, and the water proof and air permeable polyurethane resin located on the second surface of the middle layer is located directly between the woven fabric made of the polyamide fibers and the at least one layer of a second non-woven fabric of the lower layer; nor does Krishnan teach a predetermined number of loops connected to and spaced apart long peripheral edges of each of the upper layer, the middle layer, and the lower layer.

The secondary reference to Brown et al. teaches a non-woven first outer layer (12), a non-woven middle barrier layer (16) being a water impervious layer

such as polyurethane, and a non-woven or woven second outer layer (14). Brown et al. does not teach the center barrier having a woven layer, as claimed in the present invention. Since Brown et al. does not teach the middle layer of the present invention, Brown et al. can not teach the middle layer has a first surface directly connected to the upper layer and a second surface directly connected to the lower layer.

Brown et al. do not teach the middle layer has a first surface directly connected to the upper layer and a second surface directly connected to the lower layer; the water proof and air permeable polyurethane resin located on the first surface of the middle layer is located directly between the woven fabric made of the polyamide fibers and the at least one layer of the first non-woven fabric of the upper layer, and the water proof and air permeable polyurethane resin located on the second surface of the middle layer is located directly between the woven fabric made of the polyamide fibers and the at least one layer of a second non-woven fabric of the lower layer; nor do Brown et al. teach a predetermined number of loops connected to and spaced apart long peripheral edges of each of the upper layer, the middle layer, and the lower layer.

Even if the teachings of Krishnan, and Brown et al. were combined, as suggested by the Examiner, the resultant combination does not reasonably teach: the middle layer has a first surface directly connected to the upper layer and a second surface directly connected to the lower layer; the water proof and air permeable polyurethane resin located on the first surface of the middle layer is located directly between the woven fabric made of the polyamide fibers and the at least one layer of the first non-woven fabric of the upper layer, and the water proof and air permeable polyurethane resin located on the second surface of the middle layer is located directly between the woven fabric made of the polyamide fibers and the at least one layer of a second non-woven fabric of the lower layer; nor does the combination teach a predetermined number of loops connected to and spaced apart long peripheral edges of each of the upper layer, the middle layer, and the lower layer.

It is a basic principle of U.S. patent law that it is improper to arbitrarily pick and choose prior art patents and combine selected portions of the selected patents

on the basis of Applicant's disclosure to create a hypothetical combination which allegedly renders a claim obvious. The Supreme Court, in *KSR International Co. V. Teleflex Inc. et al.*, 550 U.S. 1, 82 USPQ2d at 1391 (2007), reaffirmed the framework of *Graham v. John Deere Co. of Kansas City* for determining obviousness under 35 U.S.C. 103. In that decision, the Supreme Court stated, at page 2:

In *Graham v. John Deere Co. of Kansas City*, 383 U. S. 1 (1966) , the Court set out a framework for applying the statutory language of §103, language itself based on the logic of the earlier decision in *Hotchkiss v. Greenwood*, 11 How. 248 (1851), and its progeny. See 383 U. S., at 15–17. The analysis is objective:

“Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” *Id.*, at 17–18.

While the sequence of these questions might be reordered in any particular case, the factors continue to define the inquiry that controls. If a court, or patent examiner, conducts this analysis and concludes the claimed subject matter was obvious, the claim is invalid under §103.

The Supreme Court, further explained that:

Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary

skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit. See *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) ("**[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness**"). *KSR* at 1396 (*Emphasis Added*).

Applicant submits that the above-presented arguments clearly indicate that the Examiner has failed to provide an "articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" for combining selected elements of Krishnan with selected elements of Brown et al. *KSR* at 1396 (citing *In re Kahn* at 988). Clearly, such a combination is not an acceptable combination under 35 U.S.C. §103. The rejections of Applicant's claims as being rendered obvious by the aforementioned combinations of references under 35 U.S.C. §103 are respectfully traversed.

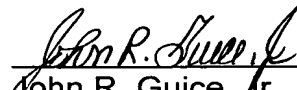
Summary

In view of the foregoing amendments and remarks, Applicant submits that this application is now in condition for allowance and such action is respectfully requested. Should any points remain in issue, which the Examiner feels could best be resolved by either a personal or a telephone interview, it is urged that Applicant's local attorney be contacted at the exchange listed below.

Respectfully submitted,

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